

STATE OF TENNESSEE
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:)	
)	
JAMES R. RICE d/b/a MARKET)	TDFI No.: 07-56-C
STREET PAWN and JAMES R. RICE)	
d/b/a J & L PAWN SHOP,)	
)	
Respondents.)	

EMERGENCY CEASE AND DESIST ORDER

The Commissioner of the Tennessee Department of Financial Institutions (hereinafter "Commissioner"), having determined that James R. Rice d/b/a Market Street Pawn (hereinafter "Respondent Market Street Pawn") and James R. Rice d/b/a J & L Pawn Shop (hereinafter "Respondent J & L Pawn Shop"), have violated and are currently violating the Tennessee Title Pledge Act (hereinafter "Act"), Tennessee Code Annotated Sections (hereinafter "TENN. CODE ANN. §§") 45-15-101, *et seq.*, and that extraordinary circumstances require immediate action in this matter, hereby issues the following EMERGENCY CEASE AND DESIST ORDER pursuant to TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), and TENN. CODE ANN. § 45-15-118(b)(3).

JURISDICTION AND IDENTIFICATION OF THE PARTIES

1. TENN. CODE ANN. § 45-1-104 provides that the Tennessee Department of Financial Institutions (hereinafter "Department") is charged with the execution of all laws relative to persons doing or engaged in a banking or other business as provided in Title 45 (Banks and Financial Institutions).

2. TENN. CODE ANN. § 45-1-107(a)(4) provides that, in addition to other powers conferred by Title 45 (Banks and Financial Institutions), the Commissioner has

the authority to order any person to cease violating a provision of Title 45 (Banks and Financial Institutions) or lawful regulation issued under Title 45 (Banks and Financial Institutions). Pursuant to TENN. CODE ANN. § 45-1-107(c), notice and opportunity for a hearing shall be provided in advance of the Commissioner issuing such an order, except that in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action but shall promptly afford a subsequent hearing upon application to rescind the action taken.

3. The Commissioner is responsible for the administration, enforcement, and interpretation of the Act, and any regulations promulgated pursuant to the Act. TENN. CODE ANN. §§ 45-15-101, *et seq.*

4. TENN. CODE ANN. §§ 45-15-102(1) and (3) state that the policy of this state and the purpose of Title 45 (Banks and Financial Institutions), Chapter 15 (Title Pledges), include ensuring "...a sound system of making title pledge loans through statewide licensing of title pledge lenders..." by the Department and providing "...for the examination and regulation of title pledge lenders by the..." Department.

5. Pursuant to TENN. CODE ANN. § 45-15-118(a)(1), if, after notice and opportunity for a hearing, the Commissioner finds that a person has violated the Act or any administrative regulation issued pursuant to the Act, the Commissioner has the authority to order the person to cease and desist violating the Act or any administrative rules issued pursuant to the Act. However, in cases involving extraordinary circumstances requiring immediate action, the Commissioner may take such action without providing the opportunity for a prior hearing pursuant to TENN. CODE ANN. § 45-15-118(b)(3). In such circumstances, the Commissioner shall promptly afford a

subsequent hearing upon an application to rescind the action that is filed with the Commissioner within twenty (20) days after receipt of the notice of the Commissioner's emergency action pursuant to TENN. CODE ANN. § 45-15-118(b)(3).

6. Respondent Market Street Pawn is a sole proprietorship owned and managed by an individual named James R. Rice. Respondent Market Street Pawn is located at 1298 Market Street, Dayton, Tennessee 37321. The Department issued Respondent Market Street Pawn a Tennessee title pledge lender's license (license number 1455) on February 21, 2006 (02/21/06). Said license expired on October 31, 2006 (10/31/06).

7. Respondent J & L Pawn Shop is a sole proprietorship owned and managed by an individual named James R. Rice. Respondent J & L Pawn Shop is located at 2047 Watts Bar Highway, Spring City, Tennessee 37381. The Department issued Respondent J & L Pawn Shop a Tennessee title pledge lender's license (license number 1508) on March 3, 2006 (03/03/06). Said license expired on October 31, 2006 (10/31/06).

FACTUAL ALLEGATIONS

8. At all times relevant hereto, Respondent Market Street Pawn and Respondent J & L Pawn Shop did not possess Tennessee licenses from the Department to lawfully engage in the business of title pledge lending in the state of Tennessee.

9. On or about March 15, 2007 (03/15/07), the Department received licensure renewal applications, and the corresponding licensure renewal fees, concerning Respondent Market Street Pawn and Respondent J & L Pawn Shop.

10. In a letter dated March 16, 2007 (03/16/07), from Stephen Henley (hereinafter "Henley"), Director of Licensing for the Compliance Division of the

Department, and addressed to James R. Rice, Henley stated “[a]ccording to the Department’s records, your renewal for the Title Pledge Services License(s) were not received until March 15, 2007, which is four (4) months after expiration of your licenses. At this time, we are unable to accept your renewal paperwork and are returning same which is enclosed. However, you may submit a new application to conduct business as a title pledge lender.”

11. Additionally, according to the letter referenced in paragraph ten (10), Henley stated “[i]f you are currently engaged in the business of title pledge services, you are in violation of TCA § 45-15-105 for operating without a license.”

12. Following the letter referenced in paragraph ten (10), Respondent Market Street Pawn and Respondent J & L Pawn Shop filed incomplete licensure applications with the Department on or about March 30, 2007 (03/30/07). As of the effective date of this Emergency Cease and Desist Order, said licensure applications are still “pending” due to the fact that said licensure applications have been deemed to be incomplete. Said licensure applications have been deemed to be incomplete due to the fact that Respondent Market Street Pawn Shop and Respondent J & L Pawn Shop have failed to provide the Department information necessary and pertinent to the licensing approval process despite a written request to do so.

13. Compliance Examiner-in-Charge Keith Sharp (hereinafter “Sharp”) conducted an on-site examination of Respondent J & L Pawn Shop pursuant to the Act from April 2nd through the 3rd, 2007 (04/02-03/07).

14. During the course of the onsite examination referenced in paragraph thirteen (13), Sharp uncovered evidence that Respondent J & L Pawn Shop had continued

to engage in the business of title pledge lending in the state of Tennessee despite the fact that Respondent J & L Pawn Shop's license had expired on October 31, 2006 (10/31/06).

15. Pursuant to the examination referenced in paragraph thirteen (13), Sharp drafted an examination report that included a "Violations from Examination" section. According to said examination report, under the "Violations from Examination" section, Sharp specifically noted "[t]he licensee's license expired on 10/31/2006. The licensee continues to operate without a license."

16. According to the examination report referenced in paragraph fifteen (15), Respondent J & L Pawn Shop was provided a copy of the examination report at the conclusion of the examination.

17. On April 4, 2007 (04/04/07), Sharp conducted an on-site examination of Respondent Market Street Pawn pursuant to the Act.

18. During the course of the onsite examination referenced in paragraph seventeen (17), Sharp uncovered evidence that Respondent Market Street Pawn had continued to engage in the business of title pledge lending in the state of Tennessee despite the fact that Respondent Market Street Pawn's license had expired on October 31, 2006 (10/31/06).

19. Pursuant to the examination referenced in paragraph seventeen (17), Sharp drafted an examination report that included a "Violations from Examination" section. According to said examination report, under the "Violations from Examination" section, Sharp specifically noted "[t]he licensee's license expired on 10/31/2006. The licensee continues to operate without a license."

20. According to the examination report referenced in paragraph nineteen

(19), Respondent Market Street Pawn was provided a copy of the examination report at the conclusion of the examination.

21. Following the aforementioned examinations, Henley forwarded two (2) letters, both dated August 1, 2007 (08/01/07), to Steven R. Rice and James R. Rice, stating that the licensure applications referenced in paragraph twelve (12) were deemed to be incomplete. Additionally, according to said letter, Henley specifically requested that Respondent Market Street Pawn and Respondent J & L Pawn Shop submit additional information, necessary and pertinent to the licensure approval process, within thirty (30) days of the date of said letter. Finally, according to said letter, Henley specifically noted that "...pursuant to Tennessee Code Annotated § 45-15-105(a), no person shall engage in the business of title pledge lending without having first obtained a license. A separate license shall be required for each location from which such business will be conducted. Any loan made without a license is void, in which case the person making the loan forfeits the right to collect principal, interest, and any other fees paid by the customer in connection with the title pledge agreement or property pledge agreement."

22. As of the effective date of this Emergency Cease and Desist Order, Respondent Market Street Pawn and Respondent J & L Pawn Shop have failed to provide the additional information requested in the letter referenced in paragraph twenty-one (21), and have utterly failed to respond otherwise.

23. On November 1, 2007 (11/01/07), Compliance Examiner-in-Charge Jim Simmons (hereinafter "Simmons") conducted a second on-site examination of Respondent J & L Pawn Shop pursuant to the Act.

24. During the course of the onsite examination referenced in paragraph twenty-three (23), Simmons uncovered recent evidence that Respondent J & L Pawn Shop was still engaging in the business of title pledge lending in the state of Tennessee despite the fact that Respondent J & L Pawn Shop's license had expired on October 31, 2006 (10/31/06).

25. Specifically, Simmons documented, amongst other unlicensed transactions, a principal payment of fourteen dollars and twenty cents (\$14.20), on behalf of Pledgor J.C. (*initials are used in reference to the Pledgor to protect confidentiality*), as recent as October 3, 2007 (10/03/07), concerning a title pledge agreement that was entered into after the expiration (10/31/06) of Respondent J & L Pawn Shop's license.

26. Pursuant to the examination referenced in paragraph twenty-three (23), Simmons drafted an examination report that included a "Violations from Examination" section. According to said examination report, under the "Violations from Examination" section, Simmons specifically noted "[l]icensee is conducting title pledge activity after the expiration of license on 10/31/06. A violation of TCA 45-15-105(a)...Fifteen (15) – Title Pledge Loans were originated between 11/1/06 (license expiration) and the date of this exam, 11/1/07...Ten (10) of these have paid out, and five (5) are still active...."

27. According to the examination report referenced in paragraph twenty-six (26), Respondent J & L Pawn Shop was provided a copy of the examination report at the conclusion of the examination.

28. On November 2, 2007 (11/02/07), Sharp conducted a second on-site examination of Respondent Market Street Pawn pursuant to the Act.

29. During the course of the onsite examination referenced in paragraph twenty-eight (28), Sharp uncovered recent evidence that Respondent Market Street Pawn was still engaging in the business of title pledge lending in the state of Tennessee despite the fact that Respondent Market Street Pawn's license had expired on October 31, 2006 (10/31/06).

30. Specifically, Sharp documented, amongst other unlicensed transactions, a principal payment of ten dollars (\$10.00), on behalf of Pledgor S.H. (*initials are used in reference to the Pledgor to protect confidentiality*), as recent as November 2, 2007 (11/02/07), concerning a title pledge agreement that was entered into after the expiration (10/31/06) of Respondent Market Street Pawn's license.

31. Pursuant to the examination referenced in paragraph twenty-eight (28), Sharp drafted an examination report that included a "Violations from Examination" section. According to said examination report, under the "Violations from Examination" section, Sharp specifically noted "[t]he licensee's license expired on 10/31/06. The licensee continues to operate without a license. The licensee has wrote a total of nineteen (19) new title pledge agreements since its title pledge license expired and has been collecting renewal payments, principal payments, and redemption payments on these nineteen (19) title pledge agreements...."

32. According to the examination report referenced in paragraph thirty-one (31), Respondent Market Street Pawn was provided a copy of the examination report at the conclusion of the examination.

33. The aforementioned pattern of engaging in the business of title pledge lending without having first obtained Tennessee title pledge lender's licenses from the

Department is an indicator that Respondent Market Street Pawn and Respondent J & L Pawn Shop will continue to engage in the business of title pledge lending in the future, notwithstanding the fact that the licenses for Respondent Market Street Pawn and Respondent J & L Pawn Shop have expired as of October 31, 2006 (10/31/06).

CAUSES OF ACTION

34. The factual allegations as stated in paragraphs eight (8) through thirty-three (33) of this Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that Respondent Market Street Pawn and Respondent J & L Pawn Shop have violated and are currently violating TENN. CODE ANN. § 45-15-105(a), in that Respondent Market Street Pawn and Respondent J & L Pawn Shop have engaged and are currently engaging in the business of title pledge lending in the state of Tennessee without having first obtained Tennessee title pledge lender's licenses from the Department.

35. The factual allegations as stated in paragraphs eight (8) through thirty-three (33) of this Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that extraordinary circumstances require immediate action pursuant to TENN. CODE ANN. § 45-1-107(c) and TENN. CODE ANN. § 45-15-118(b)(3).

POLICY STATEMENT

36. In order to qualify for a title pledge lender's license, TENN. CODE ANN. § 45-15-106(a)(2) requires an applicant, in addition to other requirements, to demonstrate the financial responsibility, financial condition, business experience, character, and

general fitness sufficient enough to reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly.

37. Additionally, TENN. CODE ANN. § 45-15-106(a)(1) requires an applicant seeking a title pledge lender's license to demonstrate a tangible net worth, which comprises tangible assets less liabilities, of not less than seventy-five thousand dollars (\$75,000.00) for each location.

38. Furthermore, TENN. CODE ANN. § 45-15-106(d)(3) requires an applicant seeking a title pledge lender's license to obtain a surety bond or irrevocable letter of credit in the amount of twenty-five thousand dollars (\$25,000.00), payable to the Commissioner and for the benefit of any person injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of the Act on behalf of a licensed title pledge lender.

39. Finally, TENN. CODE ANN. § 45-15-105(b) states that any title pledge agreement entered into without a title pledge lender's license is void as a matter of law, in which case the unlicensed lender making the loan forfeits the right to collect any moneys, including principal, interest, and any fees paid by the pledgor in connection with the title pledge agreement.

40. The factual allegations set forth in paragraphs eight (8) through thirty-three (33) of this Order, incorporated by reference as though specifically set forth herein, are sufficient to establish by a preponderance of the evidence that Respondent Market Street Pawn and Respondent J & L Pawn Shop have violated and are currently violating TENN. CODE ANN. § 45-1-107(a)(4), TENN. CODE ANN. § 45-1-107(c), and TENN. CODE ANN. § 45-15-118(b)(3), by engaging in the title pledge lending business in the state of

Tennessee without having first obtained Tennessee title pledge lender's licenses from the Department and without possessing the requisite surety bond or irrevocable letter of credit. Said violations have deprived the Commissioner of the opportunity to determine whether Respondent Market Street Pawn and Respondent J & L Pawn Shop have the requisite financial responsibility, financial condition, business experience, character, and general fitness sufficient enough to reasonably warrant the belief that their businesses will be conducted lawfully and fairly, thereby also depriving the Commissioner of the opportunity to make an informed determination of whether to grant them licenses under the Act prior to entering into title pledge agreements with Tennessee pledgors. Said violations have also deprived the Department and Tennessee pledgors of a surety bond or irrevocable letter of credit to pursue in the event that any pledgors are injured by fraud, misrepresentation, breach of contract, financial failure, or violations of the Act.

EMERGENCY RELIEF

41. Having considered the factual allegations contained herein, the Commissioner has determined that Respondent Market Street Pawn and Respondent J & L Pawn Shop have violated and are currently violating the Act, and that extraordinary circumstances warrant immediate action.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

- a. That Respondent Market Street Pawn shall cease and desist immediately from engaging in the business of title pledge lending in this state without a Tennessee title pledge lender's license pursuant to TENN. CODE ANN. § 45-15-118(a)(1) and TENN. CODE ANN. § 45-15-105(a);

b. That Respondent Market Street Pawn shall cease and desist immediately from collecting any moneys, including principal, interest, and any other fees paid by pledgors in connection with any and all title pledge agreements entered into without a license, and/or otherwise is ordered to cease and desist immediately from enforcing said agreements, including but not limited to the repossession of any and all motor vehicles, pursuant to TENN. CODE ANN. § 45-15-118(a)(1) and TENN. CODE ANN. § 45-15-105(b);

c. That Respondent J & L Pawn Shop shall cease and desist immediately from engaging in the business of title pledge lending in this state without a Tennessee title pledge lender's license pursuant to TENN. CODE ANN. § 45-15-118(a)(1) and TENN. CODE ANN. § 45-15-105(a); and

d. That Respondent J & L Pawn Shop shall cease and desist immediately from collecting any moneys, including principal, interest, and any other fees paid by pledgors in connection with any and all title pledge agreements entered into without a license, and/or otherwise is ordered to cease and desist immediately from enforcing said agreements, including but not limited to the repossession of any and all motor vehicles, pursuant to TENN. CODE ANN. § 45-15-118(a)(1) and TENN. CODE ANN. § 45-15-105(b).

42. The provisions of this Order shall remain in full force and effect unless and until such time as any provision is modified, terminated, suspended or set aside by

the Commissioner, an administrative judge, or any court having jurisdiction over the matters addressed herein.

RIGHTS OF THE RESPONDENTS

43. Respondent Market Street Pawn and Respondent J & L Pawn Shop have the right to a prompt hearing for the purpose of contesting and obtaining rescission of this Order. If a prompt hearing is timely requested by either one of them, the hearing shall be conducted in accordance with the Uniform Administrative Procedures Act, TENN. CODE ANN. §§ 4-5-101, *et seq.*, and pursuant to the Official Compilation Rules & Regulations of the State of Tennessee, Rules of Procedure for Contested Cases, Chapter 0180-6.

44. The sole issue to be considered at the prompt hearing is whether extraordinary circumstances required immediate action in this matter. This Order does not constitute a final adjudication upon the merits, but merely constitutes a temporary, emergency order until such time that a contested case may be promptly instituted by the filing of: 1) a Notice of Opportunity for Hearing and the Rights of the Respondent; and 2) a Notice of Charges.

45. In order to request a prompt hearing, Respondent Market Street Pawn and Respondent J & L Pawn Shop must file written requests with the Commissioner within twenty (20) days from receipt of this Order. Any written requests for a hearing must be filed with the Commissioner, Tennessee Department of Financial Institutions, Nashville City Center, 511 Union Street, 4th Floor, Nashville, Tennessee 37219. If no such written requests are timely filed with the Commissioner, then this Order shall be deemed a Final Order without further legal process.

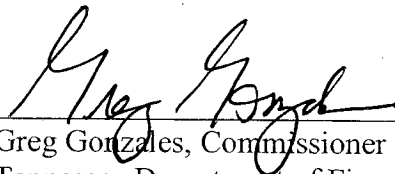
46. In the event this Order becomes a Final Order, Respondent Market Street Pawn and Respondent J & L Pawn Shop may submit to the Commissioner a petition for stay of effectiveness of the Final Order within seven (7) days of the effective date of the Final Order pursuant to TENN. CODE ANN. § 4-5-316.

47. In the event this Order becomes a Final Order, Respondent Market Street Pawn and Respondent J & L Pawn Shop may file a Petition for Reconsideration with the Commissioner, stating the specific grounds upon which the relief is requested, within fifteen (15) days of the effective date of the Final Order pursuant to TENN. CODE ANN. § 4-5-317.

48. Respondent Market Street Pawn and Respondent J & L Pawn Shop may seek judicial review of this Order by filing a Petition for Judicial Review in the chancery court of Davidson County, Tennessee, within sixty (60) days of the date this Order becomes a Final Order. A Petition for Reconsideration does not act to extend the sixty (60) day period; however, if the Petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the Petition.

ENTERED AND EFFECTIVE this the 9TH day of November, 2007.

On behalf of the Department:



Greg Gonzales, Commissioner
Tennessee Department of Financial Institutions